

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA  
3 SAN JOSE DIVISION  
4

5 UNITED STATES OF AMERICA, ) CR-07-00603-JW  
6 )  
7 PLAINTIFF, ) SAN JOSE, CALIFORNIA  
8 )  
9 VS. ) APRIL 28, 2008  
10 KENNETH VAN AALSBURG, ) PAGES 1-29  
11 )  
12 DEFENDANT. )  
13 \_\_\_\_\_ )

14  
15 TRANSCRIPT OF PROCEEDINGS  
16 BEFORE THE HONORABLE JAMES WARE  
17 UNITED STATES DISTRICT JUDGE  
18

19 A P P E A R A N C E S:

20 FOR THE PLAINTIFF: UNITED STATES ATTORNEY'S OFFICE  
21 UNITED STATES BY: JOSEPH FAZIOLI  
22 150 ALMADEN BLVD. STE 900  
23 SAN JOSE, CA 95113

24 FOR THE DEFENDANT: NOLAN, ARMSTRONG, BARTON LLP  
25 KENNETH VAN AALSBURG BY: THOMAS NOLAN, JR.  
600 UNIVERSITY AVENUE  
PALO ALTO, CA 94301

OFFICIAL COURT REPORTER: SUMMER CLANTON, CSR  
CERTIFICATE NUMBER 13185

1 SAN JOSE, CALIFORNIA APRIL 28, 2008

2 P R O C E E D I N G S

3 (WHEREUPON, COURT CONVENED AND THE  
4 FOLLOWING PROCEEDINGS WERE HELD:)

5 THE CLERK: CASE NUMBER 07-0603.

6 UNITED STATES V. KENNETH AALSBURG.

7 MR. FAZIOLI: GOOD MORNING, AGAIN,  
8 YOUR HONOR. JOSEPH FAZIOLI ON BEHALF OF THE  
9 UNITED STATES.

10 MR. NOLAN, JR.: GOOD AFTERNOON,  
11 YOUR HONOR. TOM NOLAN WITH MR. VAN AALSBURG WHO IS  
12 PRESENT.

13 YOUR HONOR, IN REGARDS TO THIS MATTER,  
14 WHILE THERE IS STILL SOME MORE WORK TO BE DONE IN  
15 DETERMINING THE GUIDELINE RANGES, WE ARE PREPARED  
16 TO PLEAD OPEN TO THE CHARGES.

17 THE COURT: VERY WELL.

18 SWEAR MR. VAN AALSBURG.

19 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

20 (WHEREUPON THE DEFENDANT WAS SWORN.)

21 THE DEFENDANT: YES.

22 MR. FAZIOLI: I WOULD JUST, FOR THE  
23 RECORD, INFORM THE COURT THAT, AS MY COLLEAGUE DID,  
24 I WILL BE MOVING TO REMAND THE DEFENDANT INTO  
25 CUSTODY AFTER HIS ENTRY OF THE PLEA.

1 THE FIRST I HEARD THE DEFENDANT WAS GOING  
2 TO PLEAD OPEN WAS TODAY, OTHERWISE I WOULD HAVE  
3 SUBMITTED THE LETTER BRIEF TO THE COURT. BUT I'LL  
4 SUMMARIZE THE LAW AND SOME UNIQUE FACTS TO THIS  
5 CASE AFTER THE DEFENDANT ENTERS HIS CHANGE OF PLEA,  
6 IN TERMS OF THE REMAND ISSUE.

7 THE COURT: VERY WELL.

8 BUT I'LL TAKE FROM THAT THAT SINCE YOU  
9 WEREN'T THINKING TO HAVE HIM PUT IN CUSTODY,  
10 THERE'S NOTHING YOU KNOW ABOUT HIM, OTHER THAN THE  
11 FACT THAT HE'S CHANGED HIS PLEA, THAT WOULD CAUSE  
12 YOU TO ASK TO REMAND HIM TO CUSTODY; YOU WEREN'T  
13 OTHERWISE SEEKING TO HAVE THE COURT PROVOKE HIS  
14 CONDITIONS OF RELEASE?

15 MR. FAZIOLI: I WAS NOT COMING HERE TODAY  
16 TO REVOKE HIS CONDITIONS OF RELEASE.

17 JUST AS A HIGHLIGHT, THE GOVERNMENT WILL  
18 SUBMIT THAT THE STANDARD CHANGES BASED ON THE FACT  
19 THAT THE DEFENDANT HAS PLEAD GUILTY, AND THERE HAVE  
20 BEEN ONE OR TWO EVENTS NOT NECESSARILY RELATED TO  
21 THIS PARTICULAR DEFENDANT BUT GENERALLY REGARDING  
22 DEFENDANTS IN CHILD PORNOGRAPHY CASES ON RELEASE  
23 SINCE THE TERMS OF RELEASE WERE SET IN THIS CASE  
24 THAT DOES GIVE THE GOVERNMENT ADDITIONAL CAUSE FOR  
25 CONCERN. BUT THE ANSWER IS NO, WE ARE NOT MOVING

1 TO PUT HIM INTO CUSTODY AT THIS HEARING.

2 THE COURT: THIS DEFENDANT, OR DEFENDANTS  
3 IN GENERAL? I DIDN'T UNDERSTAND WHAT YOU SAID.  
4 YOU SAID "DEFENDANTS IN CHILD PORNOGRAPHY CASES," I  
5 WAS JUST TRYING TO CLARIFY YOU HAVE INFORMATION YOU  
6 WANT TO BRING TO MY ATTENTION.

7 MR. FAZIOLI: THE INFORMATION, I THINK,  
8 IS -- THERE IS SOME INFORMATION ABOUT VAN AALSBURG.  
9 IT'S NOT NEW INFORMATION FROM THE POINT THAT HE WAS  
10 RELEASED FROM CUSTODY.

11 THERE HAVE BEEN SOME UNFORTUNATE  
12 INCIDENTS WITH OTHER DEFENDANTS IN CHILD  
13 PORNOGRAPHY CASES POSING A DANGER TO THEMSELVES  
14 THAT HAS COME UP SINCE MR. VAN AALSBURG WAS  
15 RELEASED FROM CUSTODY.

16 THAT'S ONE OF THE REASONS WHY THE  
17 GOVERNMENT IS GOING TO PROFFER THAT THERE MAY NOT  
18 BE CLEAR AND CONVINCING EVIDENCE THAT THE DEFENDANT  
19 IS NOT A DANGER TO HIMSELF OR OTHERS.

20 THAT DOESN'T MEAN WE HAVE SPECIFIC  
21 INFORMATION ABOUT VAN AALSBURG THAT HAS COME UP  
22 SINCE HE WAS RELEASED FROM CUSTODY, BUT THERE HAVE  
23 BEEN EVENTS WITH OTHER CHILD PORNOGRAPHY DEFENDANTS  
24 FACING SIMILAR SITUATIONS THAT WE THINK OR WE WILL  
25 PROFFER ARE RELEVANT TO DETERMINATION AS TO THIS

1 PARTICULAR CASE WHERE THIS DEFENDANT, WHO WILL BE  
2 FACING A SIMILAR SITUATION, MIGHT BE IN A SITUATION  
3 THAT HIS DETENTION MIGHT BE IN HIS INTEREST AND THE  
4 PUBLIC'S INTEREST AS WELL.

5 THE COURT: VERY WELL.

6 WITH THAT EXPLANATION, MR. VAN AALSBURG  
7 I'VE HAD YOU SWORN BY THE CLERK OF COURT BECAUSE  
8 YOUR ATTORNEY HAS INDICATED YOU INTEND TO CHANGE  
9 YOUR PLEA; THAT'S A VERY SIGNIFICANT STEP.

10 THERE ARE CERTAIN RIGHTS THAT YOU WILL BE  
11 GIVING UP IF YOU DO CHANGE YOUR PLEA. THE REASON  
12 I'VE HAD YOU SWORN IS I WANT TO ASK YOU QUESTIONS  
13 TO SATISFY MYSELF THAT YOU UNDERSTAND THOSE RIGHTS,  
14 AND SO YOU MUST ANSWER MY QUESTIONS TRUTHFULLY.

15 IF YOU DON'T ANSWER MY QUESTIONS  
16 TRUTHFULLY, YOU COULD BE PROSECUTED FOR PERJURY OR  
17 FOR MAKING A FALSE STATEMENT.

18 DO YOU UNDERSTAND THAT?

19 THE DEFENDANT: YES.

20 THE COURT: VERY WELL.

21 IN THIS CASE, YOU ARE CHARGED WITH  
22 POSSESSION OF MATTER CONTAINING ANY VISUAL  
23 DEPICTION OF A MINOR ENGAGED IN SEXUALLY EXPLICIT  
24 CONDUCT IN VIOLATION OF TITLE 18, UNITED STATES  
25 CODE SECTION 2252, SUBPARAGRAPH A(4)(B). AND YOU

1 ARE ALSO CHARGED IN COUNT TWO OF THE INFORMATION  
2 WITH CRIMINAL FORFEITURE.

3 BEFORE YOU CAME HERE TODAY WITH THE  
4 INTENT OF CHANGING YOUR PLEA, DID YOU HAVE A CHANCE  
5 TO DISCUSS THIS FULLY WITH YOUR ATTORNEY?

6 THE DEFENDANT: YES, I DID.

7 THE COURT: ARE YOU SATISFIED WITH THE  
8 SERVICES OF YOUR ATTORNEY?

9 THE DEFENDANT: YES, I AM.

10 THE COURT: HAVE YOU TAKEN ANY MEDICATION  
11 WITHIN THE PAST 48 HOURS THAT WOULD AFFECT YOUR  
12 UNDERSTANDING OF WHAT'S GOING ON HERE THIS  
13 AFTERNOON?

14 THE DEFENDANT: NO, I DID NOT.

15 THE COURT: YOU UNDERSTAND THAT IF I  
16 SENTENCE YOU TO PRISON, AS A RESULT OF THIS  
17 CONVICTION, YOU WILL NOT BE RELEASED ON PAROLE?

18 PAROLE HAS BEEN ABOLISHED FOR FELONY  
19 CONVICTIONS IN THE FEDERAL SYSTEM, AND IF I  
20 SENTENCE YOU TO A TERM OF SUPERVISED RELEASE AND  
21 YOU VIOLATE THE CONDITIONS OF SUPERVISION, YOU  
22 COULD BE SENTENCED TO ADDITIONAL TIME IN PRISON FOR  
23 THAT VIOLATION.

24 DO YOU UNDERSTAND ALL THAT?

25 THE DEFENDANT: YES, I DO.

1 THE COURT: THE OFFENSE FOR WHICH YOU ARE  
2 PLEADING GUILTY IS A FELONY AND THE JUDGMENT COULD  
3 DEPRIVE YOU OF VALUABLE CIVIL RIGHTS SUCH AS THE  
4 RIGHT TO VOTE, TO HOLD PUBLIC OFFICE, TO SERVE ON A  
5 JURY, POSSESS ANY KIND OF FIREARM, AND YOU COULD BE  
6 SUBJECT TO HAVING TO REGISTER AS A SEX OFFENDER  
7 UNDER VARIOUS LAWS IF YOU PLEAD GUILTY.

8 DO YOU UNDERSTAND THAT?

9 THE DEFENDANT: YES, I DO.

10 THE COURT: YOU HAVE THE RIGHT TO PLEAD  
11 NOT GUILTY TO ANY OFFENSE, AND IF YOU PLEAD GUILTY  
12 YOU ARE GIVING UP THAT RIGHT.

13 YOU HAVE THE RIGHT TO TRIAL BY JURY WHERE  
14 YOU WOULD BE PRESUMED TO BE INNOCENT AND THE  
15 GOVERNMENT WOULD HAVE TO PROVE YOUR GUILT BEYOND A  
16 REASONABLE DOUBT.

17 IN DOING THAT, THEY WOULD HAVE TO PROVE  
18 THAT ON OR ABOUT MARCH 8TH, IN THE NORTHERN  
19 DISTRICT OF CALIFORNIA, YOU DID KNOWINGLY AND  
20 INTENTIONALLY POSSESS CERTAIN MATTER, TO WIT,  
21 IMAGES WHICH VISUAL DEPICTIONS HAD BEEN MAILED AND  
22 TRANSPORTED IN INTERSTATE AND FOREIGN COMMERCE BY  
23 ANY MEANS, INCLUDING BY COMPUTER, AND THE PRODUCING  
24 OF WHICH VISUAL DEPICTIONS: 1. INVOLVED THE USE  
25 OF ONE OR MORE MINORS ENGAGED IN SEXUALLY EXPLICIT

1 CONDUCT. 2. WERE OF SUCH VIOLATIONS -- WERE OF  
2 SUCH CONDUCT IN VIOLATION OF 2252 A(4) (B).

3 DO YOU UNDERSTAND THAT, SIR?

4 THE DEFENDANT: YES, YOUR HONOR.

5 THE COURT: AND ALTHOUGH I SAID  
6 TRANSPORTED IN INTERSTATE AND FOREIGN COMMERCE,  
7 UNDER THE LAW, YOU COULD BE CONVICTED OF THAT  
8 OFFENSE IF THEY PROVE THAT IT WAS TRANSPORTED IN  
9 INTERSTATE OR FOREIGN COMMERCE.

10 DO YOU UNDERSTAND THAT, SIR?

11 THE DEFENDANT: YES.

12 THE COURT: YOU HAVE THE RIGHT TO THE  
13 ASSISTANCE OF AN ATTORNEY AT SUCH A TRIAL. IF YOU  
14 COULDN'T AFFORD ONE, ONE WOULD BE APPOINTED TO  
15 REPRESENT YOU FREE OF CHARGE.

16 YOU HAVE THE RIGHT TO SEE AND HEAR ALL  
17 THE WITNESSES AND HAVE THEM CROSS-EXAMINED. YOU  
18 WOULD HAVE THE RIGHT ON YOUR OWN PART TO DECLINE TO  
19 TESTIFY UNLESS YOU VOLUNTARILY DECIDED TO DO SO IN  
20 YOUR OWN DEFENSE.

21 YOU HAVE THE RIGHT TO THE ISSUANCE OF  
22 SUBPOENAS TO COMPEL THE ATTENDANCE OF WITNESSES TO  
23 TESTIFY IN YOUR DEFENSE. IF YOU DECIDE NOT TO  
24 TESTIFY OR PUT ON ANY EVIDENCE, THAT FACT COULD NOT  
25 BE USED AGAINST YOU.



1 BY ENTERING A PLEA OF GUILTY, IF THAT  
2 PLEA IS ACCEPTED BY THE COURT, YOU WILL BE WAIVING,  
3 THAT IS, GIVING UP YOUR RIGHT TO TRIAL; THAT IS,  
4 ALL OF YOUR RIGHTS ASSOCIATED WITH TRIAL AS I JUST  
5 DESCRIBED.

6 DO YOU UNDERSTAND THAT?

7 THE DEFENDANT: YES, I DO.

8 THE COURT: THIS IS AN OFFENSE WHERE THE  
9 MAXIMUM PENALTY PROVIDED BY LAW IS TEN YEARS IN  
10 PRISON, A \$250,000 FINE; THE MAXIMUM TERM OF  
11 SUPERVISED RELEASE IS ALL OF THE REST OF YOUR  
12 NATURAL LIFE. YOU ALSO COULD BE MADE TO PAY A  
13 SPECIAL ASSESSMENT OF \$100 WHICH WOULD BE DUE AND  
14 PAYABLE IMMEDIATELY.

15 DO YOU UNDERSTAND THAT?

16 THE DEFENDANT: YES, YOUR HONOR.

17 THE COURT: THERE ARE CERTAIN GUIDELINES  
18 THAT CONGRESS HAS ISSUED FOR JUDGES TO FOLLOW. I'M  
19 NOT BOUND TO APPLY THE GUIDELINES BUT I'M BOUND TO  
20 CONSULT THEM, TO TAKE THEM INTO CONSIDERATION,  
21 ALONG WITH FACTORS THAT HAVE BEEN PROMULGATED BY  
22 CONGRESS UNDER SECTION -- WHAT IS THE CODE SECTION  
23 THAT I SHOULD BE LOOKING AT -- 3552.

24 MR. FAZIOLI: YOUR HONOR, I THINK IT'S  
25 18 USC 3553.

1 THE COURT: THANK YOU.

2 UNDER THOSE PROVISIONS, I WOULD HAVE TO  
3 CONSIDER THOSE FOR PURPOSES OF TRYING TO DETERMINE  
4 A SENTENCE IN YOUR CASE.

5 HAVE YOU AND YOUR ATTORNEY HAD AN  
6 OPPORTUNITY TO TALK ABOUT SENTENCING AND WHAT  
7 FACTORS THE COURT WOULD TAKE INTO CONSIDERATION IN  
8 SENTENCING IN THIS CASE?

9 THE DEFENDANT: YES, WE HAVE.

10 THE COURT: ARE THERE ANY MANDATORY  
11 MINIMUMS INVOLVED IN THIS OFFENSE?

12 MR. FAZIOLI: NO, NOT WITH THE OFFENSE  
13 THAT IS CHARGED IN THE INFORMATION, YOUR HONOR.

14 THE COURT: VERY WELL.

15 NOW BY ENTERING A PLEA, AS YOU ARE, YOU  
16 RETAIN ALL OF YOUR RIGHTS TO APPEAL. YOU ARE NOT  
17 FORCED TO GIVE UP YOUR RIGHTS TO APPEAL NOR ARE YOU  
18 FORCED TO GIVE UP YOUR RIGHTS TO FILE A COLLATERAL  
19 ATTACK AGAINST THE JUDGMENT, BUT YOU ARE  
20 INCRIMINATING YOURSELF HERE IF YOU ENTER A GUILTY  
21 PLEA. YOU ARE GIVING UP YOUR RIGHT NOT TO  
22 INCRIMINATE YOURSELF BY ENTERING A GUILTY PLEA.

23 DO YOU UNDERSTAND THAT, SIR?

24 THE DEFENDANT: YES, I DO.

25 THE COURT: HAS ANYONE PROMISED YOU WHAT

1 PENALTY I WOULD IMPOSE IF YOU ENTER A GUILTY PLEA?

2 THE WITNESS: NO, YOUR HONOR.

3 THE COURT: HAS ANYONE THREATENED YOU IN  
4 ANY WAY TO ENTER INTO THIS PLEA?

5 THE DEFENDANT: NO.

6 THE COURT: YOU HEARD THE GOVERNMENT SAY  
7 IF YOU PLEAD GUILTY, THE GOVERNMENT WILL MOVE TO  
8 HAVE YOU REMANDED TO CUSTODY IMMEDIATELY.

9 IT IS WITHIN THE DISCRETION OF THE  
10 SENTENCING JUDGE, OR A JUDGE PRESIDING OVER YOUR  
11 CASE, IF A MOTION IS MADE TO REMAND YOU TO CUSTODY,  
12 TO TAKE INTO CONSIDERATION THAT YOU SHOULD BE  
13 REMANDED TO CUSTODY.

14 THERE IS A CHANGE IN YOUR STATUS AFTER  
15 YOU ENTER THE GUILTY PLEA. THE RIGHT TO BAIL IS  
16 SOMETHING THAT ALL PEOPLE WHO ARE CHARGED WITH  
17 CRIMINAL OFFENSES HAVE, AND WHEN YOU'RE IN A  
18 PRETRIAL STATE, THAT IS WHERE YOU HAVEN'T BEEN  
19 ADJUDICATED GUILTY, THE FACTORS FAVOR IN YOUR FAVOR  
20 IN TERMS OF THE CONDITIONS OF RELEASE. YOU'VE GOT  
21 TO BE SHOWN TO BE SOMEONE WHO IS A DANGER TO  
22 HIMSELF OR OTHERS, OR LIKELY TO FLEE, AND THE COURT  
23 EXERCISES A GREAT DEAL OF LENIENCY WITH RESPECT TO  
24 ALLOWING YOU TO BE FREE PENDING CHARGES.

25 AFTER YOU'VE BEEN ADJUDICATED GUILTY,

1 IT'S A DIFFERENT MATTER. YOU'VE BEEN A CONVICTED  
2 FELON, AS IT WERE, AND SO THEN THE GOVERNMENT HAS  
3 THE RIGHT TO ASK THE COURT, AS A CONVICTED FELON,  
4 TO LOOK AGAIN AT WHETHER OR NOT YOU ARE A FLIGHT  
5 RISK OR A DANGER TO YOURSELF OR OTHERS DURING THAT  
6 PERIOD OF TIME BEFORE YOU ARE SENTENCED TO THE  
7 CUSTODY OF THE BUREAU OF PRISONS.

8 DO YOU UNDERSTAND THAT?

9 THE DEFENDANT: YES, I DO.

10 THE COURT: HAS ANYONE PROMISED YOU WHAT  
11 I WILL DO AS TO WHETHER OR NOT I WILL LEAVE YOU  
12 FREE OR PUT YOU INTO CUSTODY IF YOU PLEAD GUILTY?

13 THE DEFENDANT: NO, THEY HAVE NOT.

14 THE COURT: VERY WELL.

15 MAY I HAVE A PROFFER FROM THE GOVERNMENT  
16 ON WHAT IT WOULD PROVE AGAINST MR. VAN AALSBURG  
17 WITH RESPECT TO THESE MATTERS.

18 MR. FAZIOLI: YOUR HONOR, IF THIS MATTER  
19 WAS TO PROCEED TO TRIAL, THE GOVERNMENT WOULD BE  
20 PREPARED TO PROVE BEYOND A REASONABLE DOUBT, USING  
21 DOCUMENTARY AND TESTIMONIAL EVIDENCE, THAT ON  
22 MARCH 8TH, 2005, DEFENDANT KNOWINGLY POSSESSED  
23 VISUAL DEPICTIONS OF MINORS ENGAGED IN SEXUALLY  
24 EXPLICIT CONDUCT.

25 THE DEFENDANT HAD OBTAINED THOSE VISUAL

1 DEPICTIONS BY OBTAINING -- DOWNLOADING THEM FROM  
2 THE INTERNET ONTO HIS COMPUTERS IN HIS RESIDENCE IN  
3 THE NORTHERN DISTRICT OF CALIFORNIA.

4 THE VISUAL DEPICTIONS THE DEFENDANT  
5 POSSESSED SHOWED MINORS ENGAGED IN SEXUALLY  
6 EXPLICIT CONDUCT AND PRODUCED USING MINORS ENGAGED  
7 IN SEXUALLY EXPLICIT CONDUCT.

8 DEFENDANT KNEW THESE VISUAL DEPICTIONS  
9 WERE OF SEXUALLY EXPLICIT CONDUCT, AND THE  
10 DEFENDANT KNEW THAT THOSE VISUAL DEPICTIONS  
11 INCLUDED THE USE OF ONE OR MORE MINORS.

12 DEFENDANT KNOWINGLY POSSESSED OVER 600  
13 IMAGES OF CHILD PORNOGRAPHY INCLUDING IMAGES OF  
14 PREPUBESCENT MINORS, AND IMAGES PORTRAYING SADISTIC  
15 OR MASOCHISTIC CONDUCT.

16 BECAUSE THE IMAGES THE DEFENDANT  
17 POSSESSED INCLUDED KNOWN VICTIM IMAGES ORIGINATING  
18 FROM OUTSIDE THE STATE OF CALIFORNIA, THE IMAGES  
19 THE DEFENDANT POSSESSED HAD BEEN SHIPPED OR  
20 TRANSPORTED IN INTERSTATE COMMERCE PRIOR TO COMING  
21 INTO HIS POSSESSION IN CALIFORNIA.

22 THAT'S THE FACTUAL PROFFER FOR THE  
23 CRIMINAL CHARGE. ON THE CHILD PORNOGRAPHY  
24 POSSESSION, THERE IS AN ADDITIONAL PROFFER THAT  
25 WOULD BE ON THE FORFEITURE POSSESSION IF THE COURT

1        WOULD LIKE ME TO GO INTO THAT.

2                THE COURT:    YES, PLEASE.

3                MR. FAZIOLI:    IF THIS MATTER WERE TO  
4        PROCEED TO TRIAL, THE GOVERNMENT WOULD BE ABLE TO  
5        PROVE THAT THREE OF THE DEFENDANT'S COMPUTERS WHOSE  
6        NAMES AND SERIAL NUMBERS ARE PUT FORTH -- AT LEAST  
7        FOR TWO OF THE COMPUTERS THAT ARE PUT FORWARD IN  
8        THE INFORMATION -- CONTAINED VISUAL DEPICTIONS OF  
9        CHILD PORNOGRAPHY DESCRIBED IN 18 USC 2252, WHICH  
10       WERE TRANSPORTED IN INTERSTATE COMMERCE; AND THUS,  
11       ARE FORFEITABLE TO THE UNITED STATES PURSUANT TO  
12       18 USC 2253 (A) (1) .

13               THE GOVERNMENT WOULD ALSO BE ABLE TO  
14        PROVE THAT THE SUBJECT PROPERTY, WHICH IS THE  
15        COMPUTERS THAT ARE PUT FORWARD IN THE FORFEITURE  
16        ALLEGATION, CONSTITUTED PROPERTY THAT THE DEFENDANT  
17        USED TO COMMIT OR TO PROMOTE THE COMMISSION OF HIS  
18        OFFENSE; AND THUS, IS ALSO FORFEITABLE TO THE  
19        GOVERNMENT PURSUANT TO THE PROVISIONS OF  
20        18 USC 2252 (A) (3) .

21               THE COURT:    VERY WELL.

22               THERE ARE THREE COMPUTERS THAT ARE  
23        LISTED, TWO WITH SERIAL NUMBERS AND ONE WITHOUT.  
24        IS THE TENDER TO THE COURT THAT ALL THREE WERE  
25        INVOLVED IN THE COMMISSION, OR PROMOTED THE

1 COMMISSION OF THE OFFENSES?

2 MR. FAZIOLI: YES, YOUR HONOR.

3 THE COURT: AND MR. NOLAN, I WASN'T  
4 CLEAR, IS MR. VAN AALSBURG ADMITTING TO THE  
5 FORFEITURE COUNT AS WELL?

6 MR. NOLAN, JR.: HE IS.

7 THE COURT: VERY WELL.

8 MR. NOLAN, JR.: HOWEVER, I'D LIKE TO  
9 INDICATE WE ARE NOT ADMITTING TO THE 600 IMAGES,  
10 BUT THAT'S NOT NECESSARY TO CONSTITUTE THE OFFENSE  
11 UNDER COUNT 1.

12 MR. FAZIOLI: I AGREE IT'S NOT NECESSARY  
13 IT PROVE THE OFFENSE UNDER COUNT 1.

14 THE COURT: VERY WELL.

15 I DON'T THINK I ACTUALLY MADE A NOTICE AS  
16 TO THE NUMBER OF IMAGES.

17 MR. NOLAN, JR.: THE PROSECUTOR SAID IN  
18 HIS PROFFER; IT'S NOT ANYWHERE REFLECTED IN THE  
19 INFORMATION.

20 MR. FAZIOLI: IT'S A PROFFER OF WHAT THE  
21 GOVERNMENT WOULD BE ABLE TO PROVE IF THE MATTER  
22 WENT TO TRIAL.

23 SO IT'S A SENTENCING ISSUE, AND I DON'T  
24 THINK THE DEFENDANT NEEDS TO ADMIT TO THAT IN ORDER  
25 TO PROCEED WITH THE GUILTY PLEA TODAY.



1 THE COURT: VERY WELL.

2 AND EXCEPT WITH THE RESPECT TO THE NUMBER  
3 OF IMAGES, MR. VAN AALSBURG, DO YOU ADMIT TO THE  
4 CONDUCT DESCRIBED BY THE UNITED STATES ATTORNEY?

5 THE DEFENDANT: YES, I DO.

6 THE COURT: VERY WELL.

7 KENNETH VAN AALSBURG, WITH RESPECT TO THE  
8 CHARGES CONTAINED IN COUNT 1 OF THE INFORMATION  
9 CHARGING YOU WITH A VIOLATION OF TITLE 18,  
10 UNITED STATES CODE SECTION 2252(A)(4)(B),  
11 POSSESSION OF MATTERS CONTAINING ANY VISUAL  
12 DEPICTION OF A MINOR ENGAGED IN SEXUALLY EXPLICIT  
13 CONDUCT, HOW DO YOU PLEAD SIR, GUILTY OR NOT  
14 GUILTY?

15 THE DEFENDANT: GUILTY, YOUR HONOR.

16 THE COURT: AND WITH RESPECT TO THE  
17 FORFEITURE ALLEGATIONS CONTAINED IN PARAGRAPH COUNT  
18 TWO, DO YOU ADMIT OR DENY THE USE OF THE LISTED  
19 EQUIPMENT TO COMMIT OR PROMOTE THE COMMISSION OF  
20 THE OFFENSES?

21 THE DEFENDANT: GUILTY.

22 THE COURT: VERY WELL.

23 THE COURT FINDS THERE'S A FREE AND  
24 VOLUNTARY PLEA. THERE'S A FACTUAL BASIS, AS I  
25 SAID, FOR THE PLEA. THE PLEA TO COUNT ONE IS



1 ACCEPTED. THE DEFENDANT ADMITS TO THE FORFEITURE  
2 ALLEGATION OF PROPERTY AS SUBJECT TO FORFEITURE AS  
3 PART OF THE FINAL JUDGMENT IN THIS CASE.

4 MAY WE HAVE A DATE FOR SENTENCING.

5 MR. NOLAN, JR.: COULD WE HAVE THAT  
6 SEPTEMBER DATE, YOUR HONOR.

7 I'M STILL WORKING ON THE NUMBER OF IMAGES  
8 WITH MY EXPERT, BUT I WANTED TO GO AHEAD AND ENTER  
9 THE PLEA. AND I KNOW THE PROBATION HAS A LIMIT TO  
10 MAKE SURE THEY GET THEIR PROBATION REPORT ON FILE.

11 THE COURT: ANY OBJECTION FROM THE  
12 GOVERNMENT?

13 MR. FAZIOLI: WELL, THAT WOULD TIE INTO  
14 THE ISSUE OF WHETHER THE DEFENDANT IS IN CUSTODY OR  
15 OUT OF CUSTODY DURING THAT TIME.

16 SO I WOULD SAY IF HE'S IN CUSTODY, WE  
17 WOULD NOT OBJECT TO THE MATTER GOING OUT THAT FAR.  
18 IF HE'S OUT OF CUSTODY, I THINK WE WOULD HAVE SOME  
19 CONCERNS.

20 THE COURT: WELL, LET'S ADDRESS THAT  
21 ISSUE.

22 TELL ME MORE --

23 MR. FAZIOLI: YOUR HONOR, MAY I RAISE ONE  
24 OTHER POINT BEFORE WE CLOSE THE BOOK ON THE GUILTY  
25 PLEA.

1 THE COURT MENTIONED THAT THE DEFENDANT  
2 RETAINS HIS RIGHTS TO APPEAL. I BELIEVE IT IS TRUE  
3 THAT HE WOULD RETAIN HIS RIGHT TO APPEAL THE  
4 SENTENCE THAT IS ISSUED IN THIS CASE, BUT I ALSO  
5 WANT TO STATE FOR THE RECORD THAT THERE ARE CERTAIN  
6 MOTIONS THAT A DEFENDANT WOULD HAVE TO FILE AT A  
7 DISTRICT COURT LEVEL IN ORDER TO RETAIN ANY SORT OF  
8 ABILITY TO APPEAL CERTAIN ISSUES, FOR EXAMPLE, A  
9 MOTION TO SUPPRESS EVIDENCE OR A MOTION TO DISMISS  
10 THE INDICTMENT.

11 IT WOULD BE GOVERNMENT'S POSITION THAT BY  
12 NOT FILING THOSE MOTIONS AND BY ENTERING A GUILTY  
13 PLEA TODAY, THE DEFENDANT WOULD NOT HAVE AVAILABLE  
14 TO HIM, OR ARGUABLY WILL HAVE WAIVED FOR PURPOSES  
15 OF APPEAL, A SUPPRESSION MOTION OR A MOTION TO  
16 DISMISS THE INDICTMENT.

17 THE COURT: IT'S SIMPLY A MATTER OF  
18 WHETHER IT IS A WAIVER, OR AS A MATTER OF LAW THOSE  
19 MOTIONS ARE NOT AVAILABLE.

20 THE DIFFERENCE THAT I TAKE OF HIS  
21 ENTERING A PLEA IN THE WAY THAT HE HAS IS HE'S NOT  
22 MADE ANY OTHER WAIVERS OTHER THAN THOSE THAT HAPPEN  
23 AS A MATTER OF LAW.

24 AND YOU ARE RIGHT, YOU CAN ARGUE. IF HE  
25 DOES APPEAL ON SOME SEARCH ISSUE OR OTHER MATTER,

1 THAT THE EFFECT OF HIS GUILTY PLEA IS TO DEPRIVE  
2 HIM OF THAT APPEAL. BUT YOU ALL HAVEN'T BROUGHT TO  
3 ME ANY WAIVERS, EXPRESS OR OTHERWISE, THERE ARE  
4 SOME THAT COME AS A MATTER OF LAW, AND I DIDN'T  
5 MEAN BY MY COMMENT TO SUGGEST THAT THE GOVERNMENT  
6 DOES NOT RETAIN ITS RIGHT TO ARGUE AS A MATTER OF  
7 LAW THAT CERTAIN POSITIONS HE MIGHT TAKE ON APPEAL  
8 ARE UNAVAILABLE. THAT WOULD ALL BE AS A MATTER OF  
9 LAW AS OPPOSED TO THE RESULT OF THE EXPRESS WAIVER.

10 MR. FAZIOLI: I JUST WANTED TO MAKE SURE  
11 THE DEFENDANT WAS AWARE OF THE GOVERNMENT'S  
12 POSITION BEFORE THE PLEA WAS --

13 THE COURT: PERFECT.

14 LET'S HEAR THE GOVERNMENT'S POSITION WITH  
15 RESPECT TO REMANDING HIM TO CUSTODY AT THIS TIME.

16 MR. FAZIOLI: YES, YOUR HONOR.

17 UNDER THE BAIL REFORM ACT IN PLEADING GUILTY  
18 TO A CHILD PORNOGRAPHY OFFENSE, THE DEFENDANT  
19 VAN AALSBURG HAS BEEN FOUND GUILTY OF A CRIME OF  
20 VIOLENCE FOR PURPOSES OF 18 USC 3143(F)(1)(A) BASIS  
21 OF A SENTENCE OF IMPRISONMENT.

22 UNDER THE BAIL REFORM ACT, POSSESSION OF  
23 CHILD PORNOGRAPHY IS A CRIME OF VIOLENCE. AND ONCE  
24 THE DEFENDANT PLEADS GUILTY TO A CHILD PORNOGRAPHY  
25 OFFENSE, EVEN A POSSESSION OF CHILD PORNOGRAPHY

1 OFFENSE, THE STANDARD OF THE BAIL REFORM ACT  
2 CHANGES FROM THE SITUATION BEFORE THE DEFENDANT HAS  
3 PLED GUILTY.

4 AND UNDER THE STANDARD WHICH APPLIES  
5 UNDER 18 USC 3145(C), THE DEFENDANT SHALL BE  
6 DETAINED UNLESS THERE ARE EXCEPTIONAL REASONS WHY  
7 THE DEFENDANT'S DETENTION WOULD NOT BE APPROPRIATE.

8 AND WHILE IT IS TRUE THE GOVERNMENT HAS  
9 NOT FILED ANY MOTION TO REMAND THE DEFENDANT AFTER  
10 HE WAS RELEASED FROM CUSTODY, THE GOVERNMENT  
11 RESPECTFULLY SUBMITS THAT THE STANDARD IS: CAN THE  
12 DEFENSE PROVE THAT THIS IS AN EXCEPTIONAL CASE SUCH  
13 THAT THE BAIL REFORM ACT SHOULD NOT APPLY AND THE  
14 DEFENDANT SHOULD NOT BE REMANDED?

15 THE GOVERNMENT WOULD SUBMIT THE  
16 DEFENDANT'S MERE COMPLIANCE WITH THE TERMS OF HIS  
17 RELEASE DOES NOT MAKE HIM SUCH AN EXCEPTIONAL CASE  
18 THAT HE SHOULD REMAIN OUT OF CUSTODY PENDING  
19 SENTENCING.

20 I WILL ALSO MENTION THREE THINGS THAT  
21 HAVE CONNECTION TO THIS CASE THAT I THINK FURTHER  
22 SUPPORT THE GOVERNMENT'S CONTENTION THAT THE  
23 DEFENDANT CANNOT MEET HIS BURDEN THAT THIS IS AN  
24 EXCEPTIONAL CASE THAT WOULD MERIT HIM STAYING OUT  
25 OF CUSTODY.

1 THE FIRST IS THE SOMEWHAT DISTURBING  
2 NATURE OF THE CHILD PORNOGRAPHY IN THIS CASE. IT'S  
3 THE GOVERNMENT'S POSITION THAT THE DEFENDANT  
4 POSSESSED OVER 600 IMAGES OF CHILD PORNOGRAPHY,  
5 SOME OF WHICH INCLUDE THE SEXUAL ABUSE OF INFANTS,  
6 A 6 AND 8-MONTH OLD CHILD SEXUALLY ASSAULTED WHILE  
7 IN A CAR SEAT; SADISTIC AND MASOCHISTIC CHILD  
8 PORNOGRAPHY, INCLUDING KNOWN VICTIM IMAGES WEARING  
9 A DOG COLLAR.

10 THE COURT MENTIONED THAT THIS SITUATION  
11 CHANGES SOMEWHAT ONCE THE DEFENDANT ADMITS TO A  
12 FELONY. AND THE DEFENDANT HAS CONCEDED THESE  
13 FACTORS, AND THESE ARE FACTORS THAT THE DEFENDANT  
14 -- THAT NEED TO BE TAKEN INTO ACCOUNT IN  
15 CONSIDERING WHETHER THIS IS AN EXCEPTIONAL CASE.

16 SECONDLY, AS THE GOVERNMENT ALLUDED TO  
17 BEFORE, THERE HAVE BEEN SOME DISTURBING EVENTS IN  
18 RECENT TIMES REGARDING DEFENDANTS IN CHILD  
19 PORNOGRAPHY CASES THAT ARE ON RELEASE EITHER  
20 PRE-GUILT RELEASE OR PRESENTENCING RELEASE.  
21 THERE'S BEEN, UNFORTUNATELY, MORE THAN ONE OCCASION  
22 IN WHICH A DEFENDANT HAS ATTEMPTED OR SUCCESSFULLY  
23 COMMITTED SUICIDE.

24 THE GOVERNMENT HAS CONCERNS THAT IN CASES  
25 SUCH AS THIS THAT INDIVIDUALS, SUCH AS THE

1 DEFENDANT, WHO ARE FACED WITH SUBSTANTIAL PRISON  
2 TERM, MAY POSE A DANGER TO THEMSELVES AND TO  
3 OTHERS.

4 AND WHILE I CANNOT STAND UP HERE TODAY  
5 AND SAY I HAVE SPECIFIC FACTS REGARDING THIS  
6 PARTICULAR DEFENDANT'S STATE OF MIND, THE  
7 UNFORTUNATE SITUATION I HAVE JUST DESCRIBED HAS  
8 COME UP.

9 IT'S AN UNFORTUNATE PATTERN, AND THE  
10 DEFENDANT IS OSTENSIBLY SUBJECT TO THE SAME  
11 PRESSURES THAT OTHER DEFENDANTS HAVE THAT WOUND UP  
12 BEING IN A VERY BAD SITUATION.

13 LASTLY, IN TERMS OF THIS NOT BEING AN  
14 EXCEPTIONAL CASE JUSTIFYING HIS RELEASE, I JUST  
15 WANTED TO BRING TO THE COURT'S ATTENTION TO AN  
16 EVENT THAT TOOK PLACE AFTER THE PARTIES HAD AGREED  
17 THAT THE DEFENDANT WOULD BE RELEASED -- THIS IS IN  
18 THE MAGISTRATE COURT.

19 AFTER THE PARTIES AGREED THAT THE  
20 DEFENDANT WAS GOING TO BE RELEASED ON CONDITIONS,  
21 THE DEFENDANT, WHO AT THAT TIME OPERATED A PILATES  
22 STUDIO IN LOS ALTOS, CALIFORNIA, UNSUCCESSFULLY  
23 SOUGHT FROM THE MAGISTRATE COURT THAT HE BE ALLOWED  
24 TO HAVE UNSUPERVISED CONTACTS WITH A 14-YEAR-OLD  
25 GIRL.

1 THE GOVERNMENT OBJECTED TO THAT. THE  
2 MAGISTRATE COURT RULED THAT HE COULD NOT HAVE  
3 UNSUPERVISED CONTACTS WITH THE CHILDREN. BUT THE  
4 FACT THAT THE DEFENDANT EVEN MADE THAT REQUEST WAS  
5 DISTURBING TO THE GOVERNMENT. AND IN LIGHT OF THE,  
6 FRANKLY, SHIFTED POSTURE OF A POST-CONVICTION WHERE  
7 IT HAS TO BE EXCEPTIONAL REASONS, THAT REQUEST BY  
8 THE DEFENDANT, I THINK, IN COMBINATION WITH THE  
9 OTHER FACTORS, RAISES CONCERNS FOR THE GOVERNMENT  
10 THAT THIS IS NOT AN EXCEPTIONAL CASE, THAT THERE  
11 MAY NOT BE CLEAR AND CONVINCING EVIDENCE THAT THE  
12 DEFENDANT IS NOT A DANGER TO HIMSELF AND OTHERS.

13 AND THE GOVERNMENT WOULD RESPECTFULLY  
14 SUBMIT THAT PURSUANT TO THE BAIL REFORM ACT, THAT  
15 THE DEFENDANT SHOULD BE REMANDED INTO CUSTODY.

16 THE COURT: VERY WELL.

17 MR. NOLAN, JR.: YES, YOUR HONOR.

18 MR. VAN AALSBURG IS 60 YEARS OF AGE. THE  
19 INVESTIGATION BEGAN IN 2003 FROM ANOTHER COMPUTER  
20 INDICATING THAT SOME IMAGES HAD BEEN SENT TO  
21 MR. VAN AALSBURG.

22 THE SEARCH WARRANT WAS EXECUTED IN MARCH  
23 OF 2005. CHARGES WERE NOT FILED UNTIL SEPTEMBER OF  
24 2007. DURING THAT TIME, APPARENTLY THE GOVERNMENT  
25 DIDN'T FEEL THERE WAS AN ENOUGH OF AN EMERGENCY TO



1 BRING CHARGES; HOWEVER, THE CONDUCT CEASED.

2 THERE WAS NO BEHAVIOR, WHATSOEVER, FROM  
3 THE TIME OF THE SEARCH WARRANT TO THE TIME OF THE  
4 CHANGES BEING FILED THAT WE ARE AWARE OF. I THINK  
5 I SAID HE HAD NO RECORD, WHATSOEVER. HE OWNS A  
6 HOME. HE OWNS A BUSINESS THAT HE HAS TO RESOLVE.

7 THE COMMENT THAT COUNSEL MADE, THE THIRD  
8 REASON IS MORE DISTURBING TO ME IN LIGHT OF THE  
9 FACT THAT THE FIRST THING MR. VAN AALSBURG SAYS IS,  
10 I HAVE A CLIENT WHO IS 14 WHO COMES IN WITH HIS  
11 PARENTS AND I'VE HAD THIS CLIENT FOR A LONG TIME.  
12 AND I SAID, WELL, LET'S SEE WHAT THE PARENTS THINK.

13 HE IMMEDIATELY TOLD THE PARENTS ABOUT IT;  
14 THEY WANTED HIM TO CONTINUE. WE BROUGHT THE ISSUE  
15 UP. I DON'T THINK THAT'S AT ALL INAPPROPRIATE TO  
16 BRING THE ISSUE BEFORE THE COURT TO TALK ABOUT  
17 WHETHER OR NOT IT SHOULD OR SHOULD NOT OCCUR.

18 AND FOR HIM TO BE TOLD HE SHOULDN'T HAVE  
19 EVEN BROUGHT THE ISSUE UP, I THINK IS VERY  
20 INAPPROPRIATE. I MEAN, I THOUGHT IT WAS AN  
21 APPROPRIATE THING TO DO, THE PARENTS OF THE CHILD  
22 THOUGHT IT WAS APPROPRIATE. THEY ARE THERE WHEN  
23 HE'S DOING THE PILATES, SO THAT'S EXTREME.

24 AS FAR AS SUICIDE, MR. VAN AALSBURG HAS  
25 BEEN IN THERAPY ON THIS ISSUE SINCE HE'S HIRED OUR



1 OFFICE; THERE'S NO PROBLEM WITH SUICIDE. AND THE  
2 ISSUE OF THE IMAGES AND THE NATURE OF THE IMAGES,  
3 WE DISPUTE THE NATURE OF THE IMAGES AND THAT'S  
4 GONNA GO INTO THE GUIDELINE RANGE.

5 AND IT'S VERY COMPLEX, BUT THIS IS NOT A  
6 CASE THAT'S FOCUSED ON THAT. AND THIS IS NOT A  
7 CASE THAT'S ANYTHING MORE THAN POSSESSION OF CHILD  
8 PORNOGRAPHY.

9 HE IS PRESENTLY ON \$75,000, OF WHAT SAYS  
10 "SECURED," BUT IT SAYS "DEFENDANT'S SIGNATURE," SO  
11 I'M NOT SURE WHETHER THERE'S INCONSISTENCY ON THE  
12 RELEASE. HE'S FULFILLED ALL THE CONDITIONS OF  
13 RELEASE, SO THAT'S NOT BEEN A PROBLEM, WHATSOEVER,  
14 NOR IS THERE ANY INDICATION THERE'S BEEN ANY  
15 DIFFICULTIES, WHATSOEVER.

16 AND I THINK HE -- THAT THE CIRCUMSTANCES  
17 OF -- THE INTENT IS TO MAKE SURE THAT VIOLENT  
18 PEOPLE ARE NOT ON THE STREETS AFTER THE ENTRY OF  
19 THE PLEA, AND THAT HE MEET THE CRITERIA OF THE  
20 UNITED STATES V. GARCIA, 340 F.3D. THE COURT HAS  
21 DISCRETION AND I THINK THE COURT SHOULD EXERCISE  
22 IT. ALLOW HIM TO REMAIN OUT SO HE COULD DISPOSE OF  
23 HIS BUSINESS AND PROPERLY PROCEED WITH THE CASE.

24 MR. FAZIOLI: YOUR HONOR, I HAVE TO  
25 CORRECT THE RECORD ON ONE POINT.

1 THE DEFENSE COUNSEL IS INCORRECT ON ONE  
2 POINT. TO THE EXTENT THE DEFENSE COUNSEL IS  
3 CONVEYING THAT THE REQUEST TO HAVE THE CONTACTS  
4 WITH THE 14-YEAR-OLD GIRL WERE SUPERVISED CONTACTS,  
5 THAT IS INCORRECT. THAT WAS NOT THE REQUEST THAT  
6 WAS MADE AT THE HEARING. THAT IS NOT THE REQUEST  
7 THAT MAGISTRATE JUDGE TRUMBULL REJECTED. AND IT'S  
8 ACTUALLY MY UNDERSTANDING THAT THIS DEFENSE COUNSEL  
9 WAS NOT PRESENT FOR THAT HEARING IN WHICH  
10 CONDITIONS OF RELEASE WERE PUT FORWARD.

11 THE COURT: WELL, I'VE HEARD ENOUGH.

12 IT DOES SEEM TO ME THAT IT'S APPROPRIATE  
13 FOR THE GOVERNMENT TO ALWAYS ASK THE COURT TO  
14 REMAND A PERSON INTO CUSTODY IF THE GOVERNMENT  
15 BELIEVES THAT THAT INDIVIDUAL POSES A FLIGHT RISK  
16 OR A DANGER TO OTHERS.

17 AND HAVING HAD THIS REQUEST MADE TO THE  
18 COURT NOW SEVERAL TIMES, IT DOES OCCUR TO THE COURT  
19 THAT THERE'S BEEN A POLICY CHANGE IN THE OFFICE OF  
20 THE UNITED STATES ATTORNEY WHERE THE REQUEST IS  
21 MADE AS A MATTER OF COURSE AS OPPOSED TO  
22 CIRCUMSTANCES WHICH BRING TO MIND QUESTIONS WITH  
23 RESPECT TO A CERTAIN DEFENDANT. AND THAT'S PURELY  
24 A MATTER FROM THE UNITED STATES ATTORNEYS OFFICE TO  
25 MAKE AS TO WHETHER IT'S DONE AS A MATTER OF COURSE

1 OR AS A MATTER OF FOCUS ON AN INDIVIDUAL DEFENDANT.

2 BUT I WILL TELL YOU IF IT'S MADE AS A  
3 MATTER OF COURSE, IT CAUSES ME TO GIVE IT LESS  
4 CONSIDERATION THAN IF I UNDERSTAND THAT IT'S BEING  
5 MADE WHEN THERE ARE CIRCUMSTANCES THAT THE COURT  
6 SHOULD CONSIDER ON AN INDIVIDUAL BASIS.

7 THERE IS A PRETRIAL SERVICES OFFICER  
8 ASSIGNED TO ANY DEFENDANT WHO IS OUT ON CONDITIONS  
9 OF RELEASE. I WOULD BE PLEASED IF THE  
10 U.S. ATTORNEY WERE TO BRING TO THE COURT'S  
11 ATTENTION, ANY CIRCUMSTANCES THAT WOULD CAUSE THE  
12 FACTOR OF FREEDOM TO BE BROUGHT INTO QUESTION.

13 I REALIZE THIS IS A CASE WHERE THE  
14 UNITED STATES ATTORNEY INDICATES THAT HE DID NOT  
15 KNOW THERE WOULD BE THIS OPEN PLEA AND SO HE'S NOT  
16 PREPARED ON THIS MATTER. AND IF SOMETHING HAPPENS  
17 EVEN WHILE THE DEFENDANT IS FREE PENDING THIS, HE'S  
18 FREE TO BRING THE MATTER BACK TO THE COURT AND ASK  
19 THE COURT TO REMAND THE DEFENDANT INTO CUSTODY.

20 BUT I DON'T FIND A BASIS HERE FOR  
21 REMANDING MR. VAN AALSBURG AT THIS TIME, EITHER AS  
22 A FLIGHT RISK OR AS A DANGER TO HIMSELF OR OTHERS.  
23 BUT MR. VAN AALSBURG, YOU HEAR THE COURT'S CONCERN,  
24 AND I'M ORDERING THAT YOU COMPLY WITH THE CURRENT  
25 CONDITIONS OF RELEASE WHICH AREN'T BEING ALTERED AT

1 THIS POINT PENDING THE SENTENCE.

2 NOW, WE COME BACK TO YOU, MS. GARCIA.  
3 CAN YOU GIVE ME A DATE FOR SENTENCING? I THINK THE  
4 SEPTEMBER DATE WAS REQUESTED.

5 THE CLERK: SEPTEMBER 8TH, 2008, AT 1:30.  
6 MR. NOLAN, JR.: THANK YOU VERY MUCH,  
7 YOUR HONOR.

8 THE COURT: SEPTEMBER 8TH AT 1:30.  
9 YOU ARE ORDERED TO REPORT IMMEDIATELY TO  
10 THE PROBATION OFFICE FOR PREPARATION OF A  
11 PRESENTENCE REPORT.

12 MR. FAZIOLI: THANK YOU, YOUR HONOR.  
13 MR. NOLAN, JR.: THANK YOU, YOUR HONOR.  
14 (WHEREUPON, THE PROCEEDINGS IN THIS  
15 MATTER WERE CONCLUDED.)  
16  
17  
18  
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24  
25

1 STATE OF CALIFORNIA )  
2 ) SS:  
3 COUNTY OF SANTA CLARA )  
4

5 I, THE UNDERSIGNED OFFICIAL COURT  
6 REPORTER OF THE UNITED STATES DISTRICT COURT FOR  
7 THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH  
8 FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY  
9 CERTIFY:

10 THAT THE FOREGOING TRANSCRIPT,  
11 CERTIFICATE INCLUSIVE, CONSTITUTES A TRUE, FULL AND  
12 CORRECT TRANSCRIPT OF MY SHORTHAND NOTES TAKEN AS  
13 SUCH OFFICIAL COURT REPORTER OF THE PROCEEDINGS  
14 HEREINBEFORE ENTITLED AND REDUCED BY COMPUTER-AIDED  
15 TRANSCRIPTION TO THE BEST OF MY ABILITY.

16   
17 { \_\_\_\_\_ }

18 SUMMER A. CLANTON

19 OFFICIAL REPORTER, CSR NO. 13185  
20  
21  
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23  
24  
25